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MODERN HINDU LAW

Incorporating Personal Laws (Amendment) Act, 2019
(Act No. 6 of 2019)

KP KHETRAPAL PUJA LAW HOUSE
LAW BOOKSELLERS & PUBLISHERS
1st Shop, 27, M.G. Road, Rampurawala Building
INDORE-452007, Ph.: 0731-4072316, 2540987

PUBLICATIONS

FIRST EDITION	1996
SECOND EDITION	1998
THIRD EDITION	2001
FOURTH EDITION	2004
FIFTH EDITION	2006
SIXTH EDITION	2007
SEVENTH EDITION	2009
EIGHTH EDITION	2011
NINTH EDITION	2013
TENTH EDITION	2015
ELEVENTH EDITION	2018
TWELFTH EDITION	2020

ISBN : 978-93-88267-86-1

Price Rs. 495/-
(Rupees Four Hundred Ninety-five Only)

Publisher
Central Law Publications,
107, Darbhanga Castle, Prayagraj-2
Phone : (0532) 2461178, 2461123
e-mail : clp.editorial@gmail.com
Web : www.clplawbooks.com

Sole Distributors for Delhi
M/s Universal Book Traders
80, Gokhale Market, Opp. New Courts,
Delhi – 110054

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Published by **Central Law Publications,** 107, Darbhanga Castle, Prayagraj-2
Typeset at **N & T Computers,** Prayagraj
Printed by **Graphic Offset,** Prayagraj.

CHAPTER 18
RELIGIOUS AND CHARITABLE ENDOWMENTS

APPENDICES

Chapter 18

RELIGIOUS AND CHARITABLE ENDOWMENTS

What are endowments ?

The definition of endowments recognised by the courts[1] since long includes the properties set apart or dedicated by gift or devise for the worship of some particular deity or for the maintenance of a religious or charitable institution, or for the benefit of the public or some section of the public in the advancement of religion, knowledge, commerce, health, safety or for any other object beneficial to the mankind. Amongst the religious and charitable endowments, hospitals, schools, universities, alms houses (for distribution of food to Brahmanas or poor), establishment of idols etc., are included. According to Raghvachariar an endowment is referred to as the setting apart of property for religious and charitable purposes in which there is a *Karta* and a specific thing which can be ascertained. A disposition in India to be a public trust must be made with the purpose of advancement of either religion, knowledge, commerce, health, safety or other objects beneficial to the mankind.[2]

Kinds of endowments.—Endowments are of different kinds which can be placed in different categories in the following manner—

(a) Public or private; (b) Real or apparent; (c) Absolute or partial; (d) Religious or charitable; (e) Valid or invalid.

Public and Private Endowment.—In order to ascertain the nature of the endowment as to whether it is public or private the subsequent conduct of the settler and use of the evidence of the property set apart by the public at large are to be considered.[3] In fact when a temple is thrown open for public at large for worship, a valid inference can be drawn that a public trust has been intended to have been created.[4] Where the outsiders along with the members of the family of the settler take part in worship in celebration of festivals in a temple as in public temples, the state of affairs point out to the public nature of the endowment.[5]

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1. *C.I.T.* v. *Pensel*, (1891) AC 531.
2. *M. Kesava Gounder* v. *D.C. Rajan*, AIR 1976 Mad 103.
3. *Chandu Lal* v. *Rampat Lal*, 1933 L 189.
4. *Lachhamma Godan* v. *Subramaniya Ayyar*, 81 IC 518.
5. *Chintamanbaaji* v. *Dhandi Ganesh*, 15 B 632; *Kaman* v. *Acchyuta*, 61 IA 405; *Tilkayat Sri Gobindji Lalji* v. *State of Rajasthan*, 1913 AC 163 (It is not necessary for the disposition to be in written. The conduct of the settler is sufficient; *Shyam Sunder* v. *Lachmi Narain Thakur*, AIR 1970 Cuttack 92; also see *Narayan Bhagwant* v. *Vinayak*, 1960 AC 100 (where the Sri Balaji temple of Nasik was held to be public); *Ram Swaroop* v. *S.P. Saheed*, 1959 SC 951; *State of Bihar* v. *Charu Lal Dessi*, 1959 SC 1002.

In contrast private endowment is that in which the public has no ingress, as an endowment for the worship of the family deity of the settler.[1] Where the property is kept separate safely for the worship of family deity by family members only, with which the public has nothing to do, it is a private endowment. Even if other Hindu worshippers are allowed to worship a family deity, it will not confer public nature to the endowment.[2] In *Venugopalaswamy* v. *H.R.E. Board*,[3] it was laid down that where the temple was initially set apart for the use of the family members only and subsequently if some outsiders are allowed ingress therein, it will not automatically alter the private nature to public. The Madras High Court too in *Keshav Gounder* v. *D.C. Rajan*,[4] held that there is very minute difference between the public and private endowment. In public endowment the interest of general public or of a group of persons is protected and involved, wherein in private endowment the interest of the settler of the trust or his family members only is protected and involved. In fact in private trust the interest is to dedicate pleasurably to the family diety something and the public has nothing to do with it.

Again the Supreme Court in *G.S. Kaha Lakshmi* v. *Shah Ranchhod Das*,[5] said that the temple of Sri Gokulnath Nadeyad is a public temple and the trust created is of public nature dedicated and created by the Ballabh cult and its supporters of Nadiad. The fact that any individual could enter into the temple only after the worshipping by *goswami* is over, does not militate in any way the public nature of the temple. Further the fact that temple is having house like appearance does not clearly establish that the temple is not a public temple. The Supreme Court has delivered an important judgment after a lapse of a decade in *Radha Kant Deo* v. *The Commissioner, Hindu Religious Charitables*.[6] The Court observed that a religious endowment of private nature cannot be conceived under English law. It can only be thought of in Hindu law. The court laid down the following test to determine the public and private nature of endowment—

(1) where the origin of endowment cannot be ascertained, the question to be determined is as to whether the members of public use it by way of right.

(2) Another fact to be determined is that whether it is controlled by a group of persons or by the founder of endowment only.

(3) It may be concluded that the endowment is of public nature where the document with respect to its creation is available and it is clear from the language of the deed that the control over the endowment is vested in the founder or in his family and a greater part of the property of the founder has been dedicated in the endowment to that temple.

(4) Again in absence of any evidence to show that the founder has

1. *Jugul Kishore* v. *Lachmandas*, 23 B 659.
2. *Gaur Hari* v. *Sharda*, 23 Pat 917.
3. AIR 1938 Mad 214.
4. AIR 1976 Mad 102.
5. AIR 1970 SC 2035.
6. AIR 1981 SC 798.

given any classification with respect to the fact that the member of public would contribute any share to it, this itself proves that the endowment is of private nature.

The Allahabad High Court too in *Smt. Sarjoo* v. *Ayodhya Pd.*,[1] founded the view that it is not possible to conclude about the nature of endowment from a single characteristic alone. In fact the entire evidence and circumstances are to be examined under which it was created. Non-appointment of a *pujari* shows the private nature; but appointment of *pujari* by members of different families establish the public nature. Even giving permission to the members of public to perform *puja* will not convert it into public. In *Radha Kant Deo* v. *The Commissioner of Hindu Religious Charitables*,[2] the Supreme Court took the view that the idea of a private religious trust could be conceived in Hindu law only and is foreign to the English law. In such an endowment the prime purpuse of the beneficiary is to establish a temple for the family worshippers. Though public may be allowed access to such a temple but that will not convert its nature as the property in fact vests with the beneficiaries and not with the diety. Certain worth mentioning tests were formulated by the court which are as under—

(1) Where the origin of endowment is not known, the question arises as to whether members of public use it by way of right.

(2) The fact whether it is controlled by a group of persons or by the founder of endowment will also be considered.

(3) Where the documentary evidence is available which clearly establishes that the control is vested in the founder or in his family and a greater part has been dedicated to the temple, so that it may be properly managed, all this will suggest that the endowment is of a private nature.

(4) Again in the absence of any proof available to show that the founder intended the public to contribute any share to it, it will be treated as a private endowment.

Charitable endowments.—Where the gifts are made for charitable purposes such as for the institution of *Dharmashala, Anathashram* (choultries), *Sadavratas* or the establishment of educational and medical institutions or/and for the construction of *Anathashrams* (orphanage), tanks, wells and bathing ghats etc., they are known as charitable endowments. In such endowments property is dedicated through the usual ceremonies of *Sankalpa* and *Utsarga*.

The popular charitable institutions created through endowments and recognised under the Hindu law are *Dharmashala* or rest houses, *Sadavrats* Anathashram, public institutions, constructions of tanks, wells, groves etc. *Dharmashalas* are the rest houses provided for the travellers known as *Pratishraya Griha* in ancient times. The property dedicated to the *Dharmashalas* vest in *Dharmashalas* itself. Its management may vest in the founder himself or a committee constituted by the founder. The benefit of *Dharmashala* may be available to public in general or it may be restricted to the members of a

1. AIR 1981 SC 798.
2. AIR 1981 SC 798.

community or to the follower's of a particular religion.

Sometimes gifts are made for the establishment of educational institutions or hospitals. Imparting free education to the people in general has been one of the prime objects of charity throughout the ages amongst Hindus. Similarly, hospitals and dispensaries known as *Arogyashalas* have also been the objects of charitable endowments.

The establishment and maintenance of *Goshalas* is also a valid charitable purpose. Similarly, the excavation of tanks and wells has also been recognised as charitable objects from the very beginning. According to Dharmashastra, construction of a well is equal to *Agnistoma* sacrifice, in desert it equals the *Aswamedha*. The well flowing with drinking water destroys all sins. The well maker, attaining heaven, enjoys all the worldly pleasures. The consecration of trees and groves is also a well recognised charitable purpose amongst Hindus. Dedications for groves and trees have been held valid.

Similarly, *Sadavrats*, where free distribution of food and alms to the needy and poor are arranged, have been well known charitable institutions amongst Hindus. *Langars* and *Anathashram* are species of *Sadavrats*. Endowments for them have been held valid. Similarly, endowments for reciting sacred books and for the food and maintenance of *Brahmacharies* and *Brahamans* have also been held valid.

Subject of endowment and its proof

So far as the subject of endowment is concerned a Hindu is free to dedicate all of his property for religious or charitable purpose, which he can validly dispose of by gift or will. A Hindu can even dispose whole of his property. It was held in *Venkata Krishna* v. *Sub-Collector*[1] that a tank can also be a subject of endowment.

It is necessary for the person relying upon a trust deed to show by evidence *'aliunde'* that there has been an existing endowment in favour of the idol to which the description *devottor* can be applied. It must further be established that the executants had in fact intended to divest themselves of their ownership from the properties dedicated by them.[2] An endowment will be effective from the date it has been dedicated. The fact that the income is used for the idol, is not in itself a proof of dedication but it may be taken in evidence to interpret a document or deed in ambiguous language.[3]

Mode of creation of an endowment

In case of creation of an endowment by Will a written deed is necessary. The Will must be in writing attested by atleast two witnesses if the case is governed by the Indian Succession Act, but the creation of a trust for the purpose is not necessary. Although no religious ceremony such as *Sankalpa* or *Samarpana* is necessary yet a clear and unequivocal manifestation of the intention to create the endowment is required to constitute dedication.[4] A mere

1. AIR 1969 SC 563.
2. *Mohani Dasi* v. *Paresh Nath*, AIR 1954 Orissa 198.
3. *Ram Chandra* v. *Ranjit Singh*, 27 C 242.
4. *Surajbhan* v. *Bodhnand*, AIR 1987 All 183.

entry in the account book of a firm of money lenders showing that the firm is indebted to the temple allowed by crediting of interest does not create an endowment. Even in the case of dedication to an idol it is not required that the property may be allowed to vest in the trustees. Mere express intention is sufficient and *Sankalpa* and *Samarpana* is not necessary. As in English law[1] it is not necessary under Hindu law that the property may be made to vest in the trustees. However, specific evidence will be required to prove the creation of an endowment in absence of such a trust where endowment is created for the benefit of idol, the idol being a legal person, the stipulation that the benefit shall vest in the trustees, will not affect the liability of the endowment. Any Hindu can dedicate whole of his property to a religious endowment by a Will or gift and no Hindu can object the dedication of the whole property to such an endowment. A pond can also be a subject of public endowment.[2]

Proof and essentials of endowments

In absence of a written gift or in absence of specific proof of exclusive income of temple, simply the proof that since long the entire income of village is used for temple purposes, does not go to establish dedication to the village. Further the fact that the income of a land is used for idol is not proof of dedication, however this fact may be taken into consideration when the document pertaining to dedication is being construed and is not in clear language and unless the dedicator does not relinquish the property, merely the writing of a document will not establish dedication. In fact the endowment is created from that date when the property has been dedicated. Following are the conditions which are to be established for a valid endowment.

(1) Absolute dedication.—For the creation of a valid endowment it is necessary that the property is absolutely and in perpetuity dedicated for the worship of diety by the donor or the dedication is for a charitable purpose. It is necessary that the donor has divested himself of the beneficial interest in the property. It is not necessary that the normal religious procedure for *Sankalp*, and construction is observed.[3] The Supreme Court had in the case of *Devakinandan* v. *Murlidhar*,[4] observed—"The essentials of a dedication are *sankalapa* (determinations), *utsarga* (renunciation of ownership in the property) and *prathista* (installation). There should be formal declaration by the settler of his intention to dedicate the property. And secondly, the owner of the property should renounce his interest in the property. If the renunciation is made for the public interest or for the use of public it becomes a public endowment. Thirdly, there should be formal installation, if it is of temple, the installation should be of deity. In case of creation of an endowment there is no question of acceptance of the dedication of property, whereas in case of a gift in secular sense the acceptance of gift is necessary." Similarly, the court in the case of *Nirmala Bala* v. *Balaichand*,[5] has held that where renunciation of the property is made and none

1. *Maruti* v. *Gopal*, 34 Bom LR 415.
2. *Venkat Krishna* v. *Sub-Collector*, AIR 1969 SC 563.
3. *Vipin* v. *Rudra Narain Mishra*, AIR 1978 Orissa 202.
4. AIR 1957 SC 133.
5. AIR 1965 SC 1874.

of its part is retained for the successors then the dedication is absolute. The fact that the ancestors gave other persons the right to use, will not affect the validity of the trust.

(2) Object must be definite.—It is necessary that the object of the dedication is definite, meaning thereby it should be made explicit as to for which diety the dedication has been made or the charitable purpose for which the bequest has been made. A dedication to the *Dharma* is invalid, the dedication being vogue and uncertain.[1] In the same manner leaving the charitable trust at the will of trustees to decide the purpose is invalid.[2] A trust created for the worship of any diety, is invalid, the specific name of the diety being not mentioned. According to Madras High Court[3] there cannot be dedication under charitable trust or endowment for the *Samadhi* of a person or for *Gurupuja* and other rites (*anosthana*). In *Saraswati* v. *Raj Gopal*,[4] the Supreme Court held that building of a *Samadhi* of an ordinary person cannot be the object of charitable endowment. But where an institution has emerged out of a Samadhi and it has become the place of worship and *archana* for the members of the public, a charitable endowment can be created for it.[5]

Similarly, in *Nagu* v. *Banu*,[6] the Supreme Court said where an ancestor's Samadhi has been built up, raising of a memorial over it for performing *shardha* ceremonies and conducting periodical worship over it could be done through creation of an endowment.

In *Radha Govindji* v. *Smt. Kewala Devi*,[7] the Calcutta High Court has held that no valid endowment is created simply by the execution of an instrument to this effect by the donor. It has to be clearly proved that (1) the donor virtually intended to dedicate the property in the name of the deity; and (2) he has divested himself of all the benefits from that property. Both these conditions are essential for the creation of a valid endowment.

Reiterating the above view the Andhra Pradesh High Court[8] has said later on in a case that following are the incidents which are to be considered for deciding as to whether an endowment is real or nominal—

(1) the fact that the endowment was created, and

(2) the conduct of the parties (donor and donee) and the surrounding circumstances. Where an endowment or a trust is created, the conduct of the parties with respect to enjoyment of the property, as laid down in the deed of endowment is not very much material".

(3) Property must be definite.—Any endowment is not valid unless some definite property is dedicated. Any uncertainty regarding the subject matter of the bequest is fatal for its validity.

1. *Nemchand* v. *Piarilal*, 47 CWN 56 PC.
2. *Jai Ram* v. *Bhagirath*, ILR 1949 Nag 765.
3. *Mallayalam* v. *Mallayalam*, (1974) 2 MLJ 126.
4. AIR 1953 SC 491.
5. *Ramaswamy* v. *Commissioner*, 1951 Mad 473.
6. AIR 1978 SC 1174.
7. AIR 1974 Cal 283.
8. *M. Appala Ramanujacharyalu* v. *M. Venkatavanara*, AIR 1974 AP 316.

Hence the subject matter of the property given in the endowment must be specified, for example, A by means of a Will has directed that the income of a property be spent for a specified charitable purpose; but he did not mention in it the exact amount to be spent. Such a bequest will be invalid for uncertainty. In *Gokul* v. *Ishwar Lochana*,[1] the executor of a Will directed the administrators of instrument that a temple should be constructed by incurring reasonable expenses in the courtyard of his house. Here the amount was not fixed for the construction of temple, yet the court held that in such a case the expenses up to the tune of 39% of the income would be considered as reasonable expense.

(4) Person setting or creating the endowment should be competent person.—It is necessary that the settler is major, of sound mind and is not legally disqualified for creating an endowment. A person governed by Mitakshara can only dedicate his separate or self acquired property but not his coparcenary interest. But a person governed by Dayabhag school, *i.e.*, a father is competent to create an endowment of his whole property in which his coparcenary property is also included. Even a woman after the passing of Hindu Succession Act, 1956, can dedicate her property as she is now an absolute owner of the property. Earlier her right of dedication was limited. A *Karta* of H.U.F. can also make a gift *inter vivos* of small portion of joint Hindu family property for pious, religious and charitable objects.[2] In *Raghunath* v. *Govind* a *Karta* alienated providing permanent shrine to a family idol, such an alienation was held valid.[3]

(5) Endowment must not be opposed to law.—In spite of the fact that the endowment must not be opposed to law, yet bequests to idols and temples are not treated invalid for transgressing the rule which forbids perpetuities.[4] But an endowment created for saving the property from creditors is void or if it is made within two years of the insolvency of the transferor. Where a part of the property is dedicated for performing *puja* of a diety it does not give rise to a valid religious endowment.

In *M. Appala Ramanujacharyalu* v. *Venkatavanara Sorhacharyulu*,[5] the Andhra Pradesh High Court has held that mere execution of a deed of dedication without the donor intending to act upon the terms of the deed would not create a valid endowment. To constitute a valid endowment, it must be established that the donor intended to divest himself of his ownership in the property dedicated. Where, in fact, an endowment is created or a trust comes into existence, the subsequent conduct of the parties with regard to the enjoyment of the property settled or endowed, is not very much material. The principle upon which a gift cannot be made in favour of unborn person is inapplicable upon idols.[6]

Destruction of an idol.—The religious purpose of any dedication to an idol does not cease after the destruction of an idol or its breakdown. In the case

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1. 14 Cal 223.
2. *Patram* v. *Siva Subramanya*, 16 Mad 353.
3. 8 All 76.
4. *See* Mayne's Hindu Law Ed., p. 914.
5. AIR 1974 AP 316.
6. *Mohar Singh* v. *Het Singh*, 32 All 337.

of *Puran Chand* v. *Gopal Lal*,[1] the Court has held that "where an idol is defaced or destroyed, the endowment is not affected by it. The religious object remains alive and another idol is installed on it and it is duly consecrated so that the worship and *archana* may be performed in the same manner as it was desired by the founder".

Idol is a legal person.—Idol is a legal person and is also a judicial person. It can institute a suit and a suit can also be brought against it. Its interest is taken care of by a person who administers the idol. Legally the administrator has the same rights which are possessed by an administrator of minor's property. The administrator is referred to as *shebait* and he exercises the rights vested in the idol and in fact he is the guardian of the idol. He can also contest the suit on behalf of the idol and the suit brought against it.[2] The possession of the property dedicated to the idol is in the hands of the *shebait*. Any suit brought by the idol or against it is in fact brought in the name of the idol.

In *Ram Jankijee Deities* v. *State of Bihar*,[3] the Supreme Court has held that Hindu law recognises, Hindu idol as a judicial person being capable in law of holding property by reason of the Hindu Shastras following the status of a legal person in the same way as that of a natural person.

Dedication to idol not in existence.—In spite of the established principle under Hindu law that dedication can only be made in favour of a person in existence, Calcultta High Court has held in the case of *Bhupati Ram* v. *Ramlal*,[4] that a gift or bequest to an idol not in existence at the time of gift or the testator's death is not invalid. The principles barring a bequest or right in favour of an inborn person is inapplicable to an idol.

In a subsequent case[5] the same court said that there can be dedication in favour of an idol even without the intervention of trustees, but an endowment created for the worshipping of any diety, without disclosing the name of the diety is void. A valid endowment can also be created with an intention to execute it.

Religious endowment cannot be revoked.—When the donor completely divests himself of the property and creates an endowment, he cannot revoke that endowment. Where the testator reserved any of his interest, then apart from that interest he cannot earn any other profit from it.

Only that religious endowment can be transferred, converted or revoked which has been created in favour of a family idol and that too with the consent of all the members of the family, otherwise after the creation of a religious endowment, it no longer remains alienable, revokable or convertible.[6]

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1. 8 CLJ 369.
2. *Gopaldutt* v. *Baburam*, AIR 1936 A 653; *Mahadeo Pd.* v. *Kariya Bharti*, AIR 1935 PC 44; *Gurupad* v. *Manmohan*, AIR 1936 C 215; *Shri Radha Krishnaji* v. *Rameshwar*, AIR 1934 Pat 584.
3. A.I.R. 1999 S.C. 2133.
4. 14 CWN 18; also see *Chaturbhuji* v. *Chaturjit*, 33 A 253 : 8 IC 822; *Lachmi Narain* v. *Mokhya Raman*, 41 CWN 759; *Narayan Singh* v. *Venkatlingam*, 50 Mad 687.
5. 51 Alld 621.
6. *Jagatmohini* v. *Sokhimani*, 14 MIA 289.

Any dedication or gift which was non-existent at the time of the death of the dedicator, the dedication or gift would not be valid. When a property is fully dedicated for the worship of a deity, the property gets vested in the idol in the capacity of a legal person but the position of the idol is not like that of a minor.[1]

Math—Devasthana—Dharmashala

Other charitable institutions which are quite known amongst Hindus apart from religious or private trust are *Maths, Devasthanas* and *Dharmashalas.*

Math.—The religious institutions have been divided in India in two categories— Temple and *Math* and *Devasthana* consists of idol worship it may be public or for a particular community or for class of persons. The manager of Temples or *Devasthanas* are called *Shebaits.* Contrary to this, *Math* is a place where persons of a particular religious community or followers thereof reside or it is a place of *Sanyasees* where religious discourses and preachings are given. *Math* is different from *Devasthans* and other religious trusts in spite of the fact that the origin of both of these institutions is from the property given by a *Dharamatma.* Properties given in *Math* vests in the *Mahant* for the preaching of a particular belief or religious philosophy, but that given to a *Devasthan* vests in the diety or idol legally consecrated. Object of *Math* is the propagation of religious belief whereas *Devasthan,* is the place where the idol or diety is to be worshipped.[2]

In a case Allahabad High Court has held that *Math* is a religious institution which vests in one specified person, who is the religious head of a branch of a particular religious sect, and he is the manager of the properties of the *math.*[3]

In *Shilpi Papachar* v. *State of Karnataka and others,*[4] the Court observed that for appointment of *Mathadhipa*this in *Math*—custom and usage play a primary role, neither statute nor rules of succession of *Math* conferring powers to appoint *Mathadhipati.*

Kinds of Math.

(1) **Maurusi Math**—Where the seat of *Mahant* devolves round the pupils of *Mahant.*

(2) **Panchayati Math**—Where *Mahant* is elected by *Panchayat.*

(3) **Hakumi Math**—Where the Mahant, the propounder of the *Math* keeps the right to appoint reserved with him.

Mahant.—Mahant is the manager of the property of the *Math* who was also the head of the institution. Normally *Mahant* was the *Sanyasi* or *Bramhachari* but in some *Maths* there was a permission to marry. A female Hindu can also become a *Mahant* but she is incompetent to perform the spiritual and religious rituals or acts.

Position of Mahant.—Mahant acts in two ways; one, as religious *Guru* and the other like a *Shebait* of idol. He is also the manager of the property. He is the

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1. *Kalaka Devi* v. *M.R.T. Nagpur,* AIR 1970 SC 439
2. *Swami Harbanshacharji* v. *State of M.P.,* AIR 1981 MP 82.
3. AIR 1972 Alld 273.
4. AIR 2003 Kant. 111.

head of the institution. The performance of religious acts, worshipping of idols and the execution of the traditional religious activities are the responsibilities of the *Mahant*. All the properties of the institution vest in him. He keeps the property of the institution as a trustee.[1] Such view has been expressed by the Supreme Court in the case—*Krishna Singh* v. *Mathura Ahir*.[2] According to the court—"A *math* is an institutional sanctum presided over by a superior, who combines in himself the dual office of being the religious or spiritual head of the particular cult or religious fraternity and of the manager of the secular properties of the institution of the *Math*.

The property belonging to a *Math* is in fact attached to the office of the *Mahant* and passed by inheritance to no one who does not fill the office. The head of the *Math*, as such, is not a trustee in the sense in which that term is generally understood, but in legal contemplation he has an estate for life in its permanent endowments and an absolute property in the income derived from the offerings of his followers, subject only to the burden of maintaining the institution.

Mahant can use and retain the usufruct so long he remains on the chair (*gaddi*) of *Mahant*. He possesses very wide powers pertaining to the property over which he is the *Mathadipati* (*Mahant*) the only restriction upon his right is that he cannot spend the property for an immoral purpose or for his personal use.

He is only the Manager and guardian of the idol and institution. In any case he has only the right of use of the property. The mode of use depends upon the tradition. He is neither trustee of the property in English sense nor in any case the property vests in him or gets transferred to him. Still he is responsible like a trustee with respect to the administrative powers relating to the property.

The duty of *Mahant* is not only to manage the *Math* but also the propagation of the spiritual and religious knowledge. For this he arranges religious discourses and also executes the *guru*-pupil tradition for the dissemination of the religious knowledge of its sect.[3] *Mahant's* post is not heritable property because the nature of this office is different.[4]

When the *Math's* property goes in the hands of a trespasser, the *Mahant* for the recovery thereof can file a suit and spend money for its recovery and can also mortgage the property. He can go to the extent of selling of the property in case of legal necessity. In all such cases the court has held the acts of the *Mahant* to be *intra vires*.[5]

Mahant is the manager of institution and idol and is also its guardian. He represents the *Akhara*. He can sue on behalf of *Akhara* and can also contest a suit on behalf of *Akhara*.[6] In real sense he is the person who has the right to sue for the recovery of the lost property of the *Math*.

1. *Ram Prakash Das* v. *Anant Das*, 43 IA.
2. AIR 1980 SC 707.
3. *Vidya Baruthi* v. *Baliswami Ayyar*. 48 IA 302.
4. 1954 S.C. 282.
5. *Viram Prakash* v. *Narendra Das*, AIR 1966 SC 1011.
6. *Gurandita* v. *Amardas*, AIR 1965 SC 1966.

The devolution of the office of *Mahant* is based upon the traditions of the Math. The successor is appointed by the *Mathadish* himself during his lifetime. The office of the *Mahant* and the properties of the *Math*, both are indivisible. Some times the heir is elected by the followers of the *Math* and the pupils. But the right to appoint the successor if vested in the *Mahant* is not a transferable right.[1] The Supreme Court had held in *Amar Prakash* v. *Prakashanand*,[2] that a person, not a *chela* but accepted as such could be validly appointed as a successor; for successorship it is necessary that he must be disciple. The mode of succession to office of the *Mahant* is sometimes determined by the founder of the institution himself.

Where such a right is recognised in a *Math*, the appointment is not required to be recognised by the fraternity. It is also not necessary that the co-religious *Math* must grant approval to such a right.

Extinction of the post of Mahant.—In the following circumstances the *Mahant's* post gets extinct—

(i) death of the *Mahant*;

(ii) waiver of the post of *Mahant*;

(iii) on developing some incapability;

(iv) mismanagement of the *Math*, or immoral life.

Deva Sampatti.—*Deva Sampatti* literally means property of the *Devata i.e.*, property of some deity, so the *deva sampatti* refers to that property which has been dedicated to the *devata* or has been given in the name of the *Dharma*. It is different from the property of *Math*. Property given to the *Maths* is related to the *Mathadhis* or the post of *Math* and the property devolves in favour of such person in succession who holds the post. In certain sense it is a trust property which is brought for the use of the institution.

Shebait.—The manager of the *Devasthan* is known as *Shebait* in the Northern India and as *Dharmkarta* in the South. *Shebait* is that person who serves the deity, consecrated in the temple as a *Devata*. *Shebaitship* represents two parts—Maintenance of deity and management thereof. It is not only an office simply but is also accompanied with certain rights. In spite of the fact that the position of *Shebait* is not like the English trustee yet his duties are similar to that of trustee. *Shebait* owes the duty like the manager of a religious endowment, as per the traditions towards the diety of maintaining and preserving the idol and property.[3] The Supreme Court has held in *Prafulla Charan* v. *Satya Charan*,[4] that the property dedicated to an idol vests in it, is an ideal sense only; ex-necessities, the possession and management has to be entrusted to some human agent, called *Shebait* in the North. The legal character of *Shebait* cannot be defined with precision and exactitute. Broadly described he is the human ministrant and custodian of the idol as its earthly spokesman, its authorised representative entitled to deal with all its temporal affairs and manage its property. As regards the administration of the *debutter* property his position is analogous to that of a

1. AIR 1977 All 273.
2. AIR 1979 SC 845.
3. (1933) 60 Cal 422.
4. AIR 1979 SC 1682.

trustee; yet he is not precisely in the position of a trustee in the English sense because under Hindu law, property absolutely dedicated to an idol, and not in the *Shebait*. Although the *debutter* never vests in the *Shebait*, yet peculiarly enough, about every case, the *Shebait* has a right to a part in the usufruct, the mode of enjoyment and the amount of usufruct depending again on the usage and custom, if not devised by the founder.

A *Shebait* as manager of the property has the ownership and possession of the property and he can file a suit for the protection and profits of the diety's property. He can incur debts for the worship of temple, for repair of temple or for the protection of the belongings of the temple or for contesting the suit or saving the property from being sold for the execution of decree. Debt can be incurred according to the needs.

Office of *Shebaitship* is not heritable as per the rules of Hindu succession.[1]

Right of *Shebaits* to repeat worship is an immovable property which can only be transferred by a registered Will. The office of *Shebait* is hereditary unless otherwise stipulated or written by the creator of endowment. In the office of *Shebait*, there is a mixture of office and estate, of personal interest and obligations. One cannot be separated from the other under Hindu law. The *Shebaitship* has been treated as an immovable property in the Hindu texts and commentaries.[2]

The Calcutta High Court has laid down in its decision in the case, *Jagannath Devraj* v. *Byomkesh Rai*,[3] that he may manage the property of the deity as a reasonable man as per his own wishes. *Shebaitship* is the mixture of rights and duties over the properties of *Math* over which the Hindu law of succession applies and which devolves according to the Hindu Succession Act.

Devolution of Shebaits office.—According to the decisions of the Supreme Court[4] "the office of *Shebait* is a property. It is heritable property and, therefore, subject of devolution. If in the endowment the right of devolution of Shebaitship has not been properly described, then in the absence of any customs or usages it devolves among the heirs of the founder.

A *Shebait* cannot nominate successor by Will unless there be a usage justifying a nomination by Will."

In *S. Duthinam* alias *Kuppam Utha & others* v. *L.S. Mariappan & others*,[5] the Court upheld that *shebaitship* can be the subject-matter of Will and such Will be a valid one that will not be barred by Transfer of Property Act and it does not apply in Hindu Law.

In *Kacha Kant Seva Samity* v. *Kacha Kant Devi*,[6] a plaintiff has claimed that deity in temple was gifted to their ancestor by the King, so it is their private deity and they are the *shebaits*. He shows the ancient documents for showing appointments of fore-father as *Deshmukhya*, local persons, testifying that since

1. *Sri Ram* v. *Chandreshwar Prasad*, AIR 1952 Pat 438.
2. *Ramratan* v. *Bajrang Lal*, AIR 1978 SC 438.
3. AIR 1973 Cal 397.
4. *Profulla Charan* v. *Satyacharan*, AIR 1979 SC 1682; *See* also AIR 1979 SC 845.
5. AIR 2007 S.C. 2134.
6. AIR 2003 SCW 6152.

long plaintiff were performing the *puja* and offering other services made to Goddess by the devotees. The Supreme Court observed that, due to long possession and services of temple, he is entitled to be declared as *de facto Shebaits*.

In *Shambu Charan Shukla* v. *Sri Thakur Ladli Radha Chandra Madan Gopal Ji Maharaj*[1] case, the Supreme Court held that "*Shebaitship* is in the nature of immovable property heritable by the widow of the last male holder unless there is a usage or custom of a different nature in case where the founder has not disposed of the *Shebait's* right in the endowment created by him".

Again the Calcutta High Court in *Bhutnath Mandal* v. *Kalipad Mandal*,[2] held that where the founder's disposition in the deeds of endowment was that after the death of the son of his brother to whom the *Shebaitship* was bequeathed, his male descendants would become *Shebaits* one after another excluding the female heirs or their descendants and only after the failure of determination of these previous series of estates the nearest descendant of the founder's brothers or the seniormost among them if there be more than one of the same class, would become *Shebait*, the incapacity of the legatee's line to succeed because of the illegality of such disposition contrary to the Hindu law of inheritance would not entitle any of three nephews of the founder who were alive at the time of deeds of endowment to any benefit under those deeds.

Earlier in an another case *Smt. Hiranbala Devi* v. *Vishnu Pad Bhattacharya*,[3] the Calcutta High Court had observed that the executor of a Will, who dedicates his property in the name of the deity cannot direct any such order of succession to the office of *Shebait* which is in violation of general rules of succession. Where the founder of a religious endowment through a Will appoints A and B on the post of *Shebait* after the death of his wife and further adds a clause in it that in case of death of A and B, his male descendant in order of seniority would become *Shebait*, the court held that such a direction would be void.

The aforesaid view has been endorsed by the court in *Anath Bandhu Dey* v. *Krishnalal Das*,[4] where the court observed that if the founder of *debutter* had laid down any mode of devolution of the office of *Shebait*, the office would devolve according to that mode. In its absence, the office would devolve in accordance with the Hindu Law of Succession *i.e.*, the office of *Shebait* would be hereditary one. In this case the founder had willed that the existing *Shebait* was to appoint his immediate successor. The *Shebait* appointed his four sons one after another and thereafter created a line of succession contrary to the mode laid down by the founder. It was held that except for the appointment of the *Shebait's* eldest son, the other appointments and the line of succession prescribed were invalid. The office held reverted to the heirs of the founder and the sole heir (only son) of the last nominated *Shebait* could not lay claim to the office since there was no independent gift of the office in his favour.

There can be cases where the succession fails as laid down in the deed or

1. AIR 1985 SC 905.
2. AIR 1982 Cal 534.
3. AIR 1976 Cal. 404.
4. AIR 1979 Cal. 168.

the *Shebait* has no right to appoint his successor or *Shebait* dies before appointing a successor as has been stipulated in the deed. In such cases the right to appoint the *Shebait*, or the office of *Shebait* reverts back to the profounder of the *Math* or his heirs whether he may be a male or female. If she is a female, shall get the religious acts performed through male coparceners.

Powers and obligations of Mahant and Shebait

The powers of a *Mahant* and *Shebait* with respect to the management of *Math* and the *debutter* property are quite large. So far the management and possession of the properties of a *Math* is concerned it belongs to the *Mahant*. Similarly, the *Shebait* enjoys extensive powers with respect to the management and possession of the *debutters* properties. The following powers of *Mahant* and *Shebait* are noteworthy :

(1) Power over the income of the Math or debutter property.—Both a *Mahant* and *Shebait* are under an obligation like a trustee not to spend any additional income from *Math* or *debutter* property on himself but on the other hand to invest the same for the benefit of the estate. In order to preserve the dignity of his office a *Mahant* is not supposed to use the additional income for his personal comforts. Similarly, a trustee cannot invest the property given to a charitable institution for some purposes other than those mentioned in the deed.[1]

(2) Power to compensate.—Where a *Shebait* in order to fulfil his duties invests some of his own property or draws some money from his own accounts for purposes of carrying out the obligations thrust upon him by the founder he has got the power to compensate his loss out of the *debutter* property. Similarly, whatever revenues he pays out of his own accounts for the preservation of *debutter* property in his custody that he can realise from the *debutter* property.

(3) Power to acquire property.—The law does not disqualify the *Mahant* or *Shebait* to earn separate property. Besides discharging his duties in that capacity he can very well earn his separate properties but in that case he has to prove that it was not connected with the trust property or the property given to *Math* or to idol. Where certain property is not shown to have been acquired by a *Mahant* in his individual capacity, that would not be intended to mean for the office of *Mahant*.[2]

Removal and replacement of Idol

The *Shebait* has got the power to remove the idol from the place of worship or to replace it by another in case he finds it desirable. But where an idol has been installed in a temple, he has got no such power to replace it or to remove it unless the majority of the worshippers give their consent to it.[3] The Court also cannot interfere in the matters of replacement or transfer of the idol to another place unless it is found to be convenient for the public and the very idea of transfer has been favoured by the devotees and the worshippers.[4]

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1. 43 M 235, *Commissioner HRE Madras* v. *Srilaxmi Tirath Swamiar*, 1954 SC 282.
2. 34 Mad 470, *Gurucharan Pd.* v. *Krishnanand Giri*, 1968 SC 1932.
3. *Hari* v. *Antaji*, 44 Bom 466.
4. *Venkatchal Mudaliar* v. *Sambashiva*, 25 LW 377.

Power to contract debt.—The power has been vested in the *Shebait* to contract debt or to take a loan for the management of the temple and the idol installed therein. Such debt can be contracted for the purposes of worship or repairs of the temple or for purposes of protecting the properties belonging to the deity or to defend the suit filed against the interest of the temple or the idol. The need for the loan can be considered in the context of the circumstances at a given time and the power of the *Shebait* can be compared with the powers of a guardian of a minor.[1] In this connection the well known decided case of *Hanuman Prasad Pandey* v. *Mst. Babooee*[2] can be considered to be a good case. Whatever is necessary for the management of the temple or for the benefit of the same belonging to the temple, can be done by the *Shebait* in his capacity as a Manager of the idol. Whenever the *Shebait* considers that if the loan is not taken then the entire temple and the idol will be damaged and the worship which is being offered to the deity, would become impossible the debt taken by him would be held to be valid.[3] Whenever a creditor gives any loan to the manager of any religious institution, the onus to prove the necessity of the loan is on the creditor himself and he has also to prove to the satisfaction of the Court that he had made necessary enquiry about such necessity and was fully satisfied to it, and hence the loan given by him was fully justified.[4]

Alienation of debutter property.—The general rule is that property given for religious worship is inalienable, but the *Shebait* or *Mahant* in the charge of property can alienate such property for purposes of keeping up the religious worship and for the benefit and preservation of the property. The power of the *Shebait* or the *Mahant* to alienate the debutter's property is analogous to that of a manager for an infant heir. He has no power to alienate the debutter's property except in case of need or for the benefit of the estate.[5] The Supreme Court[6] reaffirmed the same principle when it held that where the debutter-property is to be alienated permanently by a *Shebait*, it could be permitted only in case of necessity or benefit of the estate. The rule applies when the debutter- property is to be given on a lease. The Allahabad High Court observed that the power of alienation of a *Shebait* can be compared with the power of a manager of a minor coparcener. Generally, the property dedicated to the religious and charitable purposes is alienable. But legal necessity is an exception to it. It is for the transferee to establish that the necessity was so acute that except the alienation there was no alternative. The burden lies on the alienee to prove either that there was legal necessity or benefit of estate, or that he made proper and *bona fide* enquiries as to the existence of the necessity and did all that was reasonable to the existence of such necessity, or benefit.[7]

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1. *Venkat* v. *Shivaguru Nath*, 1930 Mad 639.
2. 6 IA 393.
3. *Prasanna Kumari* v. *Gulab Chand*, 2 IA 145.
4. 12 IC 153, *Himanshu* v. *Radha*, 43 CWN 943.
5. 6 IA 393.
6. AIR 1976 SC 1960; AIR 1984 P & H 366.
7. *Chhedalal* v. *Unjiare Lal*, AIR 1987 All 127.

The worshippers have a right to file a suit to set aside a transfer of the immovable property comprising in a Hindu Religious and Charitable Endowment made by a manager thereof, provided it was found that the transfer by sale done by the *Shebait* was unjustified. In a public temple the real beneficiaries are the worshippers in the temple not the idol.[1] The legal position is well established that the worshipper of a Hindu temple is entitled, in certain circumstances, to bring a suit for declaration that the alienation of the temple-property by the *de jure Shebait* was not in the interest of deity and therefore, invalid and not binding upon the temple. The Calcutta High Court in *Jogendra Nath* v. *Official Receiver*,[2] held that under the Hindu Law an alienation of *debutter* property can only be made on the ground of legal necessity and it can be made by all the *Shebaits* acting jointly. The *Shebaits* cannot delegate their authority to any other person or a particular person or some *Shebaits*. But the position becomes different when the *debutter* estate is operating under a scheme framed by the Court. In such a case, the provisions of Hindu Law regarding the rights of the *Shebaits* acting jointly are modified to the extent as provided in the scheme.

The Supreme Court in *Vishwanath* v. *Sri Thakur Radhaballabha Ji*,[3] held that an idol is in the position of a minor and when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with an *ad hoc* power of representation to protect its interest.

Now it is well settled that the *Mahant* or *Shebait* can alienate the property for purposes of legal necessity. The Courts have held the following alienations as valid on the ground of legal necessity :—

1. To defend the office of Mahant,[4]
2. To feed the Brahmins and to repair the damaged part of the institution or the temple.[5]
3. Purchase of the essential commodities to feed the devotees and to perform the worship.[6]
4. To perform the funeral rites of the *Mahant* or Shebait.[7]
5. Repairs of the temple and the tradition to keep the worship going on.[8]

A *Shebait* or *Mahant* cannot transfer the right of management of the *debutter* property or of a *Math* property nor can he give it on lease. The right is not liable to sale even in case of execution of a decree.[9] Where, there are more than one *Shebait* or *Mahant*, they can for the benefit of the estate of the *Math* or temple surrender their rights in favour of one person.

1. AIR 1986 Pat 3.
2. AIR 1975 Cal 389.
3. AIR 1967 SC 1044.
4. 24 IC 134.
5. 50 M 497.
6. 12 MW 538.
7. 76 IC 68.
8. 2 IA 145.
9. 4 All 81.

Rights of founder.—According to Hindu Law, when the worship of an idol has been founded, the *Shebaitship* is held to be vested in the founder and in his heirs, unless—

1. He has disposed of it otherwise; or
2. There has been some usage which deals with a different mode of devolutioin.

Apart from this, the founder has the following rights :—

(a) He can determine the line of succession of the *Shebaitship*, provided it does not interfere with the general law of inheritance.

(b) In case he does not make any provision, *shebaitship* will vest in him and his heirs.

(c) In case the line provided by the founder fails the *Shebaitship* reverts to him and his heirs.

(d) If the object of the endowment is not carried out, the founder and his heirs may sue to have the property applied to its lawful purpose, or if the trust fails for the want of an object, to have the property applied cypres, *i.e.*, to other objects of similar character.

If a manager or *Pujari* of a private trust or a temple commits acts of mismanagement and mis-appropriation of the temple and its properties, he is not fit to remain in possession in that capacity. Thus, where a *Pujari* or manager of a Hindu temple raises residential buildings of his own in the temple premises and converts them to his own use and asserts proprietary rights to them, it was held that he committed act of mismanagement and misappropriation of the temple and its properties and therefore, he is not fit to remain in possession as *Pujari* or manager of the temple.[1]

If a suit is filed by deity against the person in management then Section 92 of the C.P.C. has no application to the suit and the sanction of the Advocate General is not a condition of its initiation. In case of a charitable endowment or public temple, the Advocate General or two or more than two persons with the permission of the Advocate General can file a suit for the following purposes :—

1. To remove a *Shebait* or *Mahant*;
2. appoint a new *Shebait* or *Mahant* or a trustee.

Dharmshala.—The management and control of *Dharmshala* generally vests in the founder and his heirs but the founder can also create some of hereditary managership or trust through a specific deed. The property dedicated to *Dharmshala* vests in the institution itself.

Whether a female can hold the office of Mahantship or Shebait.—A Hindu female is not competent by reason of her sex to succeed to the office of a worshipper or *Archaka* in a temple and to the emoluments attached thereto, for she may appoint a qualified deputee to officiate in her stead. There is nothing in the textual Hindu Law to the contrary, nor can it be said that the recognition of such usage is opposed to public policy in Hindu Law.[2]

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1. *Ram Chandra* v. *Janaki Ballabh*, AIR 1970 SC 532.
2. 28 All 689; *Rajeshwar* v. *Gopeshwar*, 25 Cal 226; *Bibhuti Narain Rai* v. *Smt. Sarla Bala*, AIR 1982 Cal NOC 275.

The Supreme Court in *Angurbala* v. *Debobrata*,[1] recognised the right of a female to succeed to the religious office of *Shebaitship* on the view that *Shebaitship* is a property. But while the right to such office is property, it involves also substantial element of duty. In the above case, it was said, both the elements of office and property, of duties and personal interests are blended together and neither can be detached from the other. In respect of such offices specially where they are attached to public institutions, the duties are to be regarded as primary and the rights and emoluments are only appurtenant to the duties. As the devolution of the office of the *Shebait* is regulated by succession and in absence of succession by the rule of inheritance, in both these cases, women shall be decidedly preferred in comparison to several persons equally entitled.

Persons competent to file suits.—A suit with respect to the property dedicated to the deity could be instituted by any one of the following :—

(i) the deity installed in the temple itself as a juristic person;

(ii) *Shebait*, as a human agency through whom the idol acts.

The Calcutta High Court in *Ishwardas Shuja Thakurani* v. *Smt. Kanchanbala*[2] reiterated the view that a *Shebait* could file a suit on behalf of the deity for the preservation of its interests. In case of a family or private temple any person belonging to the founder's family could file a suit on behalf of the diety.

In case of trustees looking after the management of the *debutter* property, any one of them specially interested in the management and protection thereof could file a suit to this effect. In doing so the consent of other trustees would not be necessary.[3]

Where the *Shebait* refuses to bring an action on behalf of deity or the action brought by him is contrary to the interests of deity, some other person concerned with the interest of the deity and temple would be competent to file the suit. In case of private endowments or temple any other person belonging to the family of the founder concerned with such interest could file a suit.[4]

Similarly, where a *Shebait* misuses his office and thereby makes an invalid alienation, the *pujari* or worshipper would be competent to file a suit challenging the validity of the alienation.[5]

(iii) A prospective *shebait* is also competent to file a suit for protecting the interest of endowment or temple.

(iv) The worshippers or devotees and the member of the family of founder are also competent to file such suit.

A *de facto* manager would also be competent to file a suit on behalf of *deity* (idol). When the manager of a *deity* who was an *Arya Samajist* did not claim to be the *Shebait* or *Pujari* of the *deity* but only that he was managing the property, the suit filed by him could not be said to be incompetent on the ground that he was an *Arya Samajist* who did not believe in idol worship as the work of

1. 1951 SCR 1125.
2. AIR 1977 Cal 473.
3. AIR 1988 Cal 312 : AIR 1986 Pat 158.
4. *Sri Bhagwat Basudeo* v. *Ayodhaya*, AIR 1978 Orissa 194.
5. *Mahajan Mehto* v. *Gopinath*, AIR 1986 Pat 3.

management could be done even by adherent of *Arya Samaj* which professes Hindu religion.[1]

Where a suit is filed in respect of temple property it is not necessary that the interest should be directly involved or it could be evaluated in terms of money. It would be sufficient that the interest is recognised by the civil law.

Distinction between a Shebait and Trustee.—The distinction between a manager or a *Shebait* of an idol and trustee is that where a trust has been created is well recognised that the properties of the trust in law vest in the trustee whereas in the case of an idol or a *Sansthan* they do not vest in the manager or the *Shebait*. It is the *deity* or the *Sansthan* which owns and holds the properties. It is only the possession and the management which vests in the manager.[2]

Doctrine of Cypres.—Where a clear charitable intention is expressed it will not fail because the mode, if specified could not be executed. In such cases the doctrine of cypress *i.e.*, as near as possible to the mode specified by the donor, would be applied. The doctrine will not be applied until it is clearly established that the mode specified by the donor cannot be carried into effect.

In *Batilal* v. *State of Maharashtra*,[3] the Supreme Court laid down that where the object of endowment has failed or frustrated or it could not be fully executed, for the remainder part or for the entire object, the court would create another endowment but in no case would allow it to fail. In such cases the doctrine of cypres would be applied and the entire endowment property shall be diverted for the achievement of an object similar to one for which the endowment was originally conceived.

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1. *Shivanand* v. *Sri Shankerji Maharaj Birajmani*, AIR 1970 SC 439.
2. *Kalamka Devi* v. *MRT, Nagpur*, AIR 1970 SC 439.
3. AIR 1954 SC 388 at p. 394.

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